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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

MARTEL LEROY ANDERSON,

Defendant and Appellant.

B214563

(Los Angeles County

Super. Ct. No. TA097209)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Eleanor Hunter, Judge. Affirmed.

Linda L. Gordon, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Paul M. Roadarmel, Jr., and Jaime L. Fuster, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Martel Anderson was convicted, following a jury trial, of one count of possession for sale of cocaine base in violation of Health and Safety Code section 11351.5. Appellant admitted that he had suffered a prior drug conviction within the meaning of Health and Safety Code section 11370.2, subdivision (a) and Penal Code section 667.5, subdivision (b). The trial court sentenced appellant to a total of seven years in state prison.

Appellant appeals from the judgment of conviction, contending that there is insufficient evidence to support his conviction. He also requests that we review the sealed *Pitchess* motion transcript for any abuse of discretion. We affirm the judgment of conviction.

Facts

During the evening of May 7, 2008, Los Angeles Police Officer Jesus Garcia and his partner Officer Chadorchí were monitoring apartment 690 at 1407 East 115th Street in the Nickerson Gardens Housing Development. They observed about 20 to 25 people, an unusually high number, entering and leaving that apartment through the rear door. Each person stayed inside for a minute or less. Officer Garcia believed that narcotics sales were being conducted from the apartment.

At some point, Officer Garcia observed Loretta Clark approach the back door of the apartment and knock on the door. The door was immediately opened, Clark went inside and the door was closed. Officer Garcia was familiar with Clark from his foot patrols in the area.

Officer Garcia contacted Officer Jose Velasco and Officer Ontiveros, who were in the area, and arranged for them to position themselves where they could see into the apartment when the back door was opened. About one minute later, the back door opened. Officer Garcia saw a Black female start to leave, then run back into the apartment after seeing the police officers. Officer Velasco, who could see inside the unit, testified that appellant was the person who had opened the door and closed the door. He closed only the inside door, leaving the security door open.

Officers Velasco and Chadorchí went to the front door of the apartment and Officers Garcia and Ontiveros went to the rear door. Officers Garcia and Ontiveros pounded on the doors, identified themselves as police officers and demanded entry. There was no response. The officers could hear people running up the stairs inside the apartment and could also hear the toilet flushing. Believing that contraband was being destroyed, Officer Garcia attempted to kick open the rear door. He was prevented from doing so by a five-inch steel lag bolt, which was not a standard feature of apartments in Nickerson Gardens.

Other officers arrived at the scene. Eventually, a woman who claimed to be the owner of the apartment opened the door and asked what was going on. The officers ordered her and everyone else in the building to come out with their hands up. No one came out. The officers went in.

In one of the two bedrooms upstairs, officers found Clark and Quintin Pruitt. At some point, Officer Sobieski searched Clark and found an off-white rock-like substance resembling cocaine on her person, either in her wallet or in a cigarette box.

Officers found appellant lying in bed under the covers in the other bedroom. Appellant was sweating and his heart was racing, but his eyes were closed. Officers believed that he was pretending to be asleep. Appellant was wearing boxer shorts and a t-shirt.

During a search of the apartment, officers found a razor blade in the toilet bowl of the only bathroom. Officers noticed off-white rock-like items which resembled cocaine on the floor just outside the bathroom door. Officers found three similar items in the kitchen. Officer Garcia saw a digital scale with white residue on it in the closet of the bedroom where appellant was found. Officers also found a kitchen cutting board in the room and \$38 in small denomination bills between the wall and the mattress. Officers did not find any drug paraphernalia, such as a crack pipe, in the apartment.

Based on his experience, Officer Garcia opined that the substance found in the apartment was rock cocaine and was possessed for purposes of sale. He based his opinion on the razor blade, the digital scale, which was of a type typically used by drug

dealers, the presence of cash in small denominations and the lack of ingestion paraphernalia. Three rock-like items recovered by the officers were tested and determined to contain cocaine base.

Discussion

1. Sufficiency of the evidence

Appellant contends that the evidence shows only that he was present in an area where narcotics were found, and possibly an awareness of the presence of the narcotics, and that that is not enough to prove possession of the narcotics for sale. He contends that such a conviction violated his constitutional rights to due process. The evidence shows more than appellant's mere presence at the scene. There was no violation of his rights.

In reviewing the sufficiency of the evidence, "courts apply the substantial evidence test. Under this standard, the court must review the whole record in the light most favorable to the judgment below to determine whether it discloses *substantial evidence* - that is, evidence which is reasonable, credible, and of solid value - such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." (*People v. Cuevas* (1995) 12 Cal.4th 252, 260-261, internal quotation marks and citations omitted.)

"The standard of review is the same in cases in which the People rely mainly on circumstantial evidence. Although it is the duty of the jury to acquit a defendant if it finds that circumstantial evidence is susceptible of two interpretations, one of which suggests guilt and the other innocence, it is the jury, not the appellate court which must be convinced of the defendant's guilt beyond a reasonable doubt. If the circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant a reversal of the judgment." (*People v. Stanley* (1995) 10 Cal.4th 764, 792-793, internal quotation marks and citations omitted.)

Constructive possession of a controlled substance exists when a defendant has exclusive or joint control over the substance or has a right to control the substance

personally or through another person. (*People v. Williams* (2009) 170 Cal.App.4th 587, 625; *People v. Montero* (2007) 155 Cal.App.4th 1170, 1176-1177.)

Here, officers testified that a steady stream of foot traffic entered and left the apartment through the back door. Evidence recovered later showed that rock cocaine was being sold from the apartment. Loretta Clark, who was the last person to enter the apartment before the police raid, entered through the back door. Officer Velasco testified that very shortly after Clark entered the apartment, appellant opened the back door for a woman to leave. The woman saw police and ran back inside, indicating consciousness of guilt. Appellant closed the door. This supports an inference that appellant had some degree of control over the premises, and over the access point for drug purchasers.

The officers did not report seeing appellant arrive, so appellant was inside the apartment longer than others, suggesting that he did not simply come to the apartment to purchase drugs. No paraphernalia for consuming drugs was found inside the apartment, so there is no basis to conclude that appellant came to the apartment to purchase cocaine and stayed to consume it there. Appellant was discovered in his underwear, which also shows that he was not a brief transitory visitor to the apartment.

After the woman went back into the apartment, police heard people running up the stairs and the sound of a toilet flushing. When police entered the apartment, they found appellant lying on a bed in an upstairs bedroom, sweaty and with his heart racing. This supports an inference that appellant ran up the stairs before police entered.

Police found small pieces of a substance resembling rock cocaine in the kitchen and upstairs outside the only bathroom. There was a razor blade in the toilet. This supports an inference that appellant brought rock cocaine upstairs to dispose of it in the toilet. Such activity would show control over the cocaine.

Police found a scale and kitchen cutting board in the bedroom where appellant was found. The scale had some white residue on it. They also found about \$38 dollars in small bills on the floor between the bed and the wall. No comparable equipment or cash was in the second upstairs bedroom with Clark and Pruitt or elsewhere in the apartment. The proximity of the cash and equipment to appellant in the bedroom supports an

inference that he had moved those items there when police arrived in an attempt to conceal them. This also shows control over the cocaine.

In short, appellant was seen opening and closing the back door of the apartment for Clark, showing he had control over access to the apartment; he was found in his underwear, showing that he was not a brief transitory visitor to the residence; he showed signs of exertion, which supported an inference that he was involved in the flushing of the cocaine in the upstairs bathroom; and he alone was found in a bedroom with the items apparently used to prepare cocaine for sale and with cash. This is sufficient evidence to support a reasonable inference that appellant exercised control over the cocaine, either alone or jointly with the apartment owner and/or his fellow gang member.

Since we have determined that "a rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt, the due process clause of the United States Constitution is satisfied [citation], as is the due process clause of article I, section 15, of the California Constitution." (*People v. Osband* (1996) 13 Cal.4th 622, 690.)

2. *Pitchess* motion

Appellant requests that this Court conduct an independent review of the in camera proceedings done by the trial court in response to appellant's *Pitchess* motion for discovery of peace officer personnel records of Officers Chardochi, Garcia, Ontiveros and Velasco. The trial court found that there was one discoverable complaint, for Officer Ontiveros.

When requested to do so by an appellant, an appellate court can and should independently review the transcript of the trial court's in camera *Pitchess* hearing to determine whether the trial court disclosed all relevant complaints. (*People v. Mooc* (2001) 26 Cal.4th 1216, 1229.)

We have reviewed the transcript of both of the in camera proceedings and see no error in the trial court's rulings concerning disclosure.

Disposition

The judgment is affirmed.

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ARMSTRONG, Acting P. J.

We concur:

MOSK, J.

KRIEGLER, J.